

**FILED**

JUL 21 2023

Clerk of the Court  
Superior Court of CA County of Santa Clara  
BY Melanie Bueno DEPUTY  
**MELANIE BUENO**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA-UNLIMITED JURISDICTION**

EDITH COHEN, XIN LI, YIYI ZENG,  
MAREK ALBOSZTA,

Petitioners,

vs.

PALO ALTO UNIFIED SCHOOL  
DISTRICT,

Respondents.

Case No.: 21CV385694

**ORDER AFTER HEARING ON  
COMPLIANCE WITH WRIT OF  
MANDATE ORDER**

A Petition for Writ of Mandate in the above matter was heard on December 12, 2022, before the Honorable Carrie Zepeda, Judge of the Superior Court. Thereafter, on March 13, 2023, and June 26, 2023, Mark J. Wojciechowski of Tollner Law Offices appeared on behalf of Petitioners and Mark E. Davis of Davis, Bengtson, and Young appeared on behalf of Respondents for hearings on compliance with the writ of mandate order. After the hearing on March 13, 2023, the parties were ordered to meet and confer and to modify the PAUSD Grade 9 Math Placement Plan Policy and Protocols (MPP) according to the discussions the parties had with the court and the court's direction. In preparation for the March 26, 2023, hearing, the parties submitted their own versions

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1 of the MPP, instead of a version that they could agree upon which complied with the court’s order  
2 and direction. At the hearing, the court instructed the parties to e-mail a Word document to the  
3 court which highlighted the changes the parties had made to their submitted MPP because the court  
4 wanted to track the changes and determine which, if any, of the changes conformed to the court’s  
5 direction, order and the law.

6 After reviewing the modified documents, the court emailed the parties its version of the MPP  
7 and directed the parties to review the document and to suggest any modifications and reasons for  
8 any changes. Based on the submissions of the parties, the court makes the following findings and  
9 orders and issues a final version of the MPP that shall be posted on the PAHS website.

10  
11 Discussion

12 California Education Code Sec. 51224.7, which resulted from Senate Bill 359, requires every  
13 California high school district to develop and adopt a multi-point, objective, fair and transparent  
14 placement policy that considers multiple objective measures as a basis for 9<sup>th</sup> grade math  
15 placement. The policy must permit multiple checkpoints to assess placement accuracy and pupil  
16 progress, especially at the start of the academic year. The new law was deemed necessary because  
17 studies indicated that 9<sup>th</sup> grade students were being held back to repeat their 8<sup>th</sup> grade math course.  
18 In the most egregious cases, despite achieving a “B” grade or better, or testing at proficient or even  
19 advanced on state assessments, instead of being advanced to the next course in the recommended  
20 math sequence as a freshman in high school, Latino, Black and Pacific Islander students were  
21 disproportionately made to repeat their 8<sup>th</sup> grade math course and few enrolled in calculus by the  
22 12<sup>th</sup> grade compared to their peers. Without advanced math classes in high school, a student is  
23 derailed from his or her college trajectory and is unlikely to be competitive for college entrance.  
24 Failing to take high level math classes in high school can also have significant ramifications on  
25 the student’s future economic success.

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1 To ensure a fair process and chance of success for all pupils, Senate Bill 359 was passed and  
2 Education Code section 51224.7 now provides that the PAUSD MPP must do all the following:

- 3 1. Systematically take multiple objective academic measures of pupil performance into  
4 account. Objective academic measures include statewide mathematic assessments,  
5 placement tests aligned to state adopted content standards in mathematics, classroom  
6 assignments and grades, and report cards. (Education Code Sec. 51224.7 (b)(1).)
- 7 2. Include at least one placement checkpoint within the first month of the school year.  
8 (Education Code Sec. 51224.7 (b)(2).)
- 9 3. Collect and analyze data about pupil math placement and report the data and analysis to  
10 the district governing board. (Education Code Sec. 51224.7 (b)(3).)
- 11 4. Offer clear and timely recourse for each pupil and his or her parent who questions the  
12 pupil's placement. (Education Code Sec. 51224.7(b)(4).)
- 13 5. Post the MPP on the District's Internet Website. (Education Code Sec. 51224.7 (d).)

14  
15 After considering the arguments of counsel set forth in their briefs related to the court's version  
16 of the MPP, the court makes the following findings and concludes that the MPP attached hereto as  
17 Exhibit A, complies with the law and orders the PAUSD to post said version of the MPP on its  
18 and the Palo Alto High School websites immediately (no less than 5 days after this order is issued).

19  
20 A. Systematically Take Multiple Objective Academic Measures of Pupil Performance into  
21 Account

22 The court's modified version of the Math Placement Protocols section of the MPP consolidates  
23 the paragraphs set forth in the District's version. It includes all of the objective academic measures  
24 that each party believes should be considered to ensure accurate Grade 9 math placement.  
25 Additional language included by the court contains the requirement that communication between  
26

1 teachers/guidance personnel and students and parents/guardians occur before students enter Grade  
2 9, to advise them on the importance of accurate mathematics course placement and its impact on  
3 future college eligibility so that they can choose the accurate Grade 9 math course. This language  
4 is set forth in the legislative intent and the District has stated that it wants to encourage discussion  
5 between students, parents and teachers.

6 Importantly, the court has also added the following paragraph to the section: “Students who  
7 achieve a passing grade of at least a “C” or better or are testing at proficient or advanced  
8 proficiency on state assessments will not repeat 8th grade mathematics coursework and will  
9 advance to the next level in the recommended mathematics course sequence.” This paragraph  
10 corrects the essential problem that necessitated SB 359--students being made to repeat Grade 8  
11 math courses despite achieving passing grades or being proficient or highly proficient in their  
12 math course as determined by a state assessment. The “C” grade also reflects the District’s  
13 policy that “successful completion” means a grade of C- or above, but that students who earn  
14 below a C- should repeat the course to move forward in a math pathway and for the course to be  
15 considered for college admission. Accordingly, a student who achieves a passing grade or found  
16 to be proficient or above on a state assessment should always advance to the next course  
17 sequence, rather than repeat a Grade 8 math course.

18 The District requests that a “B” grade rather than a “C” grade be used in the section because  
19 students have the option to repeat their 8<sup>th</sup> grade math course even if they achieve a “B” grade.  
20 Nothing in the District’s MPP suggests or mentions repeat of a Grade 8 math course upon  
21 achieving higher than a “D” grade. Instead, the MPP flowcharts indicate that only where a student  
22 earns a “D” or “F” grade in a Grade 8 math course would a repeat of a Grade 8 math course be an  
23 appropriate choice. Furthermore, to encourage a repeat where a student earns a passing grade  
24 would contradict the purpose and mission of SB 359. Instead, the MPP as modified by the court  
25 must and does make clear to students and parents that they will not be forced to repeat an 8<sup>th</sup> grade

1 math course upon successful completion, which is a “C” grade, or being deemed proficient or  
2 above by a state assessment.

3  
4 B. Includes at Least One Placement Checkpoint Within the First Month of the School Year

5 The court modified the District’s Grade 9 Placement Checkpoints section because the District’s  
6 version did not account for students who enroll in classes beyond Algebra 1 or Geometry in Grade  
7 9. In addition, the District required a score of 90% or higher on a readiness assessment before  
8 initiating a conversation about advancing a student to the next higher level math course. However,  
9 the 90% score was not defined by the District, therefore, the court was unable to determine if that  
10 score deemed a student to be proficient or advanced proficient in a math subject. Accordingly, the  
11 court used the term proficient, rather than the 90%, because the Legislature only requires a  
12 proficient score in order to advance to the next higher math course.

13 Initially the court deleted Grade 9 before Placement Checkpoints title because it appeared to  
14 the court that the legislative history and statute would only achieve its purpose if placement  
15 examination took place each year to ensure that students of color reach calculus or advanced  
16 statistic courses by their senior year of high school. However, the court has reviewed Held Back  
17 Addressing Misplacement of 9<sup>th</sup> Grade Students in Bay Area School Math Classes, a report by the  
18 Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, which was cited in Senator  
19 Holly J. Mitchell’s analysis of Senate Bill 359. The report appears to have been the catalyst for  
20 the change embodied in the legislation. That report only advocated and suggested a placement  
21 checkpoint in Grade 9 and each year of high school. Accordingly, the court has reverted to the  
22 title of Grade 9 Placement Checkpoint and has deleted any reference that a placement checkpoint  
23 occur every year of a student’s high school course.

1 C. Collect and Analyze Data About Pupil Math Placement and Report the Data and Analysis  
2 to the District Governing Board.

3 The District has adequately collected data showing how many students have repeated a math  
4 course in their 9<sup>th</sup> grade year. The data has been categorized by gender, race/ethnicity and EL  
5 status. The District has also reported why a student has repeated an 8<sup>th</sup> grade math class and  
6 agrees to continue to provide such data. However, for the students who have voluntarily requested  
7 to repeat a math class, the District shall include how many of those students received a passing  
8 grade or were found to be proficient or advance proficient on a state assessment.

9 The District has also agreed to report the number of appeals pers year, the number granted and  
10 the number denied and the data showing how many students have move up or down a lane after  
11 the Grade 9 placement checkpoint.

12 The District has not collected data or reported how many students, categorized by gender and  
13 race/ethnicity, have completed calculus or advanced statistics by their senior year. This measure  
14 is crucial in determining whether SB 359 is achieving its purpose. Accordingly, the District is  
15 ordered to collect and report such data and submit the data to the court and its Board by August  
16 15, 2023.

17  
18 D. Offer Clear and Timely Recourse for Each Pupil and His or Her Parent Who Questions  
19 the Pupil's Placement

20 While the District had a Board Policy which outlined the recourse for a student and parent who  
21 disagreed with the math placement, the appeals process was not contained within the MPP. The  
22 District has revised the MPP to include the appeals process and the parties have not objected to  
23 the minor modifications made by the court.

1 E. The Mathematics Placement Policy Must be Posted on the District's Internet Website

2 At the first two hearings, the District's MPP did not appear on the PAUSD or PAHS websites.  
3 This issue has since been corrected. However, the final version (CT Revised 7/21/2023) issued by  
4 this court must replace the currently posted version. In addition, the District has agreed to the  
5 court's request to hyperlink the Legislative Counsel's Digest for Senate Bill 359 and the SB 359  
6 Fact Sheet authored by Senator Holly Mitchell below the MPP title. The court thanks the District  
7 and looks forward to the addition.

8 Based on these findings, the court orders the following:

- 9 1) The District shall post the CT Revised 7/21/2023 version of the MPP, attached hereto as  
10 Exhibit A (which will be e-mailed to the parties), with the SB 359 hyperlink discussed  
11 above, on the PAUSD and Palo Alto High School websites within 7 days of the date of this  
12 order.
- 13 2) The District shall submit data to the court and its Board, which shows how many students,  
14 categorized by gender and race/ethnicity, have completed calculus or advanced statistics  
15 by their senior year by August 15, 2023.
- 16 3) The District shall revise its PAUSD Math Placement Plan Policy & Protocols to conform  
17 the changes made in the MPP and post the revised version on the PAUSD and Palo Alto  
18 High School websites within 7 days of this order.
- 19 4) As for Petitioners requested changes to the MPP that have not been ordered herein, the  
20 court has determined that those modifications exceed the requirements of SB 359 and are  
21 therefore denied.

22 IT IS SO ORDERED.

23  
24 Date: 7/21/23

  
25 Hon. Carrie A. Zepeda  
26 Judge of the Superior Court

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# EXHIBIT A

# PAUSD Grade 9 Math Placement Plan Policy & Protocols

(Senate Bill 359)

## Overview of PAUSD Math

Courses have been developed that meet the California Common Core State Standards in Mathematics (CCSS-M) for every student throughout the District. PAUSD offers three types of high school math coursework through flexible lanes of challenge: coursework that is at grade level, coursework that is both *accelerated and advanced*, and coursework that is *far beyond usual expectations* for honors-level students.

Overall, the PAUSD math program aims to help students succeed at their own pace while meeting graduation requirements, state standards, and minimum admission requirements for California State University (CSU) and University of California (UC). PAUSD provides a range of math courses (all of which fulfill graduation requirements, state standards, and CSU/UC requirements) to ensure that students are enrolled in a suitably challenging math course in which they can learn effectively. Parents/guardians and math teachers or guidance counselors will offer insights and advice to assist students in selecting the appropriate courses for high school.

Most students in PAUSD take either Algebra 1 or Geometry in Grade 8. The Mathematics Placement Act of 2015 (SB359) was enacted to enable all students, especially historically underrepresented students, to reach calculus or advanced placement statistics by Grade 12. Consistent with this goal, both math pathways lead to calculus or advanced placement statistics by Grade 11 or 12. Before the start of the Grade 9 academic year, teachers and guidance personnel will advise pupils and parents on the importance of accurate mathematics course placement and its impact on future college eligibility so pupils may take the proper course in the mathematics course sequence. Students who achieve a passing grade of at least a "C" or better or are testing at proficient or advanced proficiency on state assessments will not repeat 8<sup>th</sup> grade mathematics coursework and will advance to the next course in the recommended mathematics course sequence.

## High School Math Is a Choice Program

The high school math program is a **choice program**. It is important for students and their parents/guardians, with the advice of teachers and guidance personnel, to choose their math course lane based on finding the appropriate balance of challenge and success in the student's day. Students should also be aware of the impact of the transcript grade in the college application process. It is recommended that students choose the most rigorous course of study available in which they can earn an A or a B *on their own*.

The workload and pace of the A-lane (advanced courses) are more demanding than the grade-level/college-prep courses. The workload and pace of the H-lane (honors courses) are more demanding than the A-lane courses. In deference to students' natural growth, PAUSD offers these flexible *lanes* rather than rigid *tracks* of math. If a student wishes to move to more advanced or deeper coursework, the student may need to complete summer work. If a student wishes to move to less challenging or more basic coursework, the student can most likely move at the end of a semester without any additional work.

## Math Placement Protocols

Before entering high school, teachers or guidance personnel, shall meet with students and parents to advise them on the importance of accurate mathematics course placement and its impact on future college eligibility so students may take each course in the mathematics course sequence leading to calculus by Grade 12. To ensure accurate Grade 9 mathematics course placement, student, parents/guardians and school personnel will consider:

- Success in their current math course; test scores and overall grade
- Ability to work and persevere independently
- Readiness for the next level course as measured by the critical levels met in end-of-year-assessments
- MDTP results
- California Assessment of Student Performance and Progress (CAASPP) assessment results
- Formative and summative assessments
- Time commitments for academic and extracurricular activities; work-life balance

Students who achieve a passing grade of at least a "C" or better or are testing at proficient or advanced proficiency on state assessments will not repeat 8th grade mathematics coursework and will advance to the next course in the recommended mathematics course sequence.

## Grade 9 Placement Checkpoints (California Senate Bill 359)

During the first month of high school, all Grade 9 math students are assessed for proper placement. Instructors formatively assess students by administering the appropriate CCSS aligned readiness test for the initially assigned math course (Mathematics Diagnostic Testing Project/MDTP). For students who score proficient or higher on a readiness assessment (as determined by the test provider), staff will administer the next higher level readiness assessment to determine the appropriate math placement. The placement testing will continue until the student reaches their highest level of readiness.

For students enrolled in Algebra, this may involve moving into Geometry or Geometry Honors. Students enrolled in Geometry might move into Geometry Honors. All students must take a geometry course to meet graduation requirements and University of California minimum admission requirements. For students in Algebra 2/Trigonometry A and Algebra 2/Trigonometry H, possible course changes include Algebra 2/Trigonometry H, Introduction to Analysis and Calculus, or Analysis H.

If after the placement checkpoint a placement change appears to be appropriate, teachers and/or the Math Instructional Leader will once again meet with the student and their parents/guardians to finalize proper placement.

## Changing Math Placement

### Math Placement Appeal

Students and their parents/guardians who feel they are not appropriately placed should meet with their teacher and counselor to determine if a schedule correction is needed ([BP 6.152.1](#)). Within 10 school days of an initial placement decision, or a placement decision upon reevaluation, a student and parent/guardian may appeal the decision to the Superintendent or designee. The criteria used to help determine placement may include:

- Grade in previous course
- MDTP readiness assessment
- Grades on in-class assessments taken during the current school year
- CAASPP scores, if available
- Recommendation of teacher or counselor who has personal knowledge of the student's academic ability
- Other assessment results, as appropriate and available

### Challenge by Examination

PAUSD Board Policy ([BP 6.155](#)) allows high school students to challenge courses by examination. This examination is aligned to state-adopted content standards in mathematics taught in the course being challenged. If a student successfully challenges a course, a grade based on exam results and five units per semester covered by exam, will be added to the transcript with a note indicating that the requirement was met by examination.

## Off-Campus Courses (non-PAUSD)

Rising Grade 9 students may take a geometry course during the summer between eighth and ninth grade through a pre-approved third-party provider ([Sample of Approved Outside Institutions for Non-District Courses](#)). It is important for students to receive prior approval before taking the course to make sure that it qualifies as a course for PAUSD and fits in with the student's academic plans. [Please note that an off-campus geometry course may not fully prepare students for the highest lane of Algebra 2 (Algebra 2/Trig H).]

All other specific course graduation requirements are to be taken on a PAUSD campus. Students wishing to take off-campus courses (non-PAUSD) must have prior approval. Please see the [Gunn High School](#) and [Palo Alto High School](#) websites for more detailed information regarding off-campus courses. Students who do not receive prior approval for off-campus courses will not have those courses placed on their transcript. *This may impact graduation status.* Please confer with your guidance counselor.

## Grade 9 Math Courses

When reviewing the high school courses below, please note that “*Successful completion*” means a grade of C- or above. Students who earn below C- should repeat the course in order to move forward in a math pathway, and for the course to be considered for college admission.

### Algebra 1

Students study the applications of linear and quadratic functions. Students learn properties of real numbers, solve linear equations and inequalities, graph linear equations, equations and inequalities with absolute value, solve systems of linear equations and inequalities, simplify exponential expressions, graph and solve quadratic equations and use factoring and the quadratic formula. Students summarize, represent, and interpret data for single count variables, and analyze scatter plots for two quantitative variables. Students learn how to simplify irrational expressions and solve equations with square roots.

- Students self-report spending an average of 1.5 hours a week outside of school on this course.
- This is a college-prep course.

### Geometry

Students formalize the geometric concepts learned in middle school and expand their knowledge of Euclidean geometry. Students deepen their understanding of geometric relationships and prove them in different ways. Topics include congruence, similarity, right triangle trigonometry, transformations, area, and volume. This course includes a comprehensive review of Algebra to prepare students for Advanced Algebra and Trigonometry. Students may still access the honors level in future years (after this course). It is recommended that students begin with Geometry if they have mastered fewer than five of the seven Algebra strands, as assessed in Algebra class.

- Prerequisite(s): Successful completion of both semesters of Algebra
- Students self-report spending an average of 1.5 hours a week outside of school on this course.
- This is a college prep course.

### Geometry H

This course covers the same content as Geometry but is much more rigorous. Geometry H is designed for students who have mastered at least five of seven Algebra strands, as assessed in Algebra class. Only students who are interested in rigorous problem-solving and reaching our highest math course (BC Calculus AP) should choose Geo H. Extensive proof and problem solving are themes for this class. Geo H will involve some Algebra review but not to the extent of the non-honors Geometry course.

- Prerequisite(s): Successful completion of an Algebra course

- Students self-report spending an average of 2.5 hours a week outside of school on this course.
- This is an honors course.

### Algebra 2/Trigonometry A

In addition to the objectives of the Algebra 2 curriculum, students study circular trigonometry in greater depth, including trig identities, trigonometric applications, and solving trigonometric equations. Basic counting principles are introduced.

- Prerequisite(s): Successful completion of an Algebra course and a Geometry course
- Students self-report spending an average of 2 hours a week outside of school on this course.
- This is an advanced course.

### Algebra 2/Trigonometry Honors

This course covers content similar to Alg2/Trig A, but with a greater emphasis on proof and problem solving. In each unit, students are expected to apply their understanding of the content to solve problems that are similar but not identical to problems solved in class. Additional content includes an in-depth study of conic sections, as well as arithmetic and geometric sequences and series, law of sines and cosines, and vectors.

- Prerequisite(s): Successful completion of an introductory Algebra course and a PAUSD Geometry course or an off campus Geometry course previously approved by PAUSD.
- Students self-report spending an average of 2.5 hours a week outside of school on this course.
- This is an honors course.

## Standard Pathway

Grade 9	Grade 10	Grade 11	Grade 12
<ul style="list-style-type: none"> <li>● Geometry H</li> <li>● Geometry</li> <li>● Algebra 1</li> </ul>	<ul style="list-style-type: none"> <li>● Algebra 2/Trig H</li> <li>● Algebra 2/Trig A</li> <li>● Algebra 2</li> <li>● Geometry</li> <li>● Statistics</li> <li>● Applications</li> </ul>	<ul style="list-style-type: none"> <li>● Analysis H</li> <li>● Intro to Analysis &amp; Calculus (IAC)</li> <li>● Precalculus</li> <li>● Algebra 2</li> <li>● AP Stats</li> <li>● Intro to Data Science</li> <li>● Statistics</li> <li>● Applications</li> <li>● Applied Math H</li> </ul>	<ul style="list-style-type: none"> <li>● AP Calculus BC</li> <li>● AP Calculus AB</li> <li>● Calculus</li> <li>● Precalculus</li> <li>● AP Stats</li> <li>● Intro to Data Science</li> <li>● Statistics</li> <li>● Applications</li> <li>● Applied Math H</li> </ul>

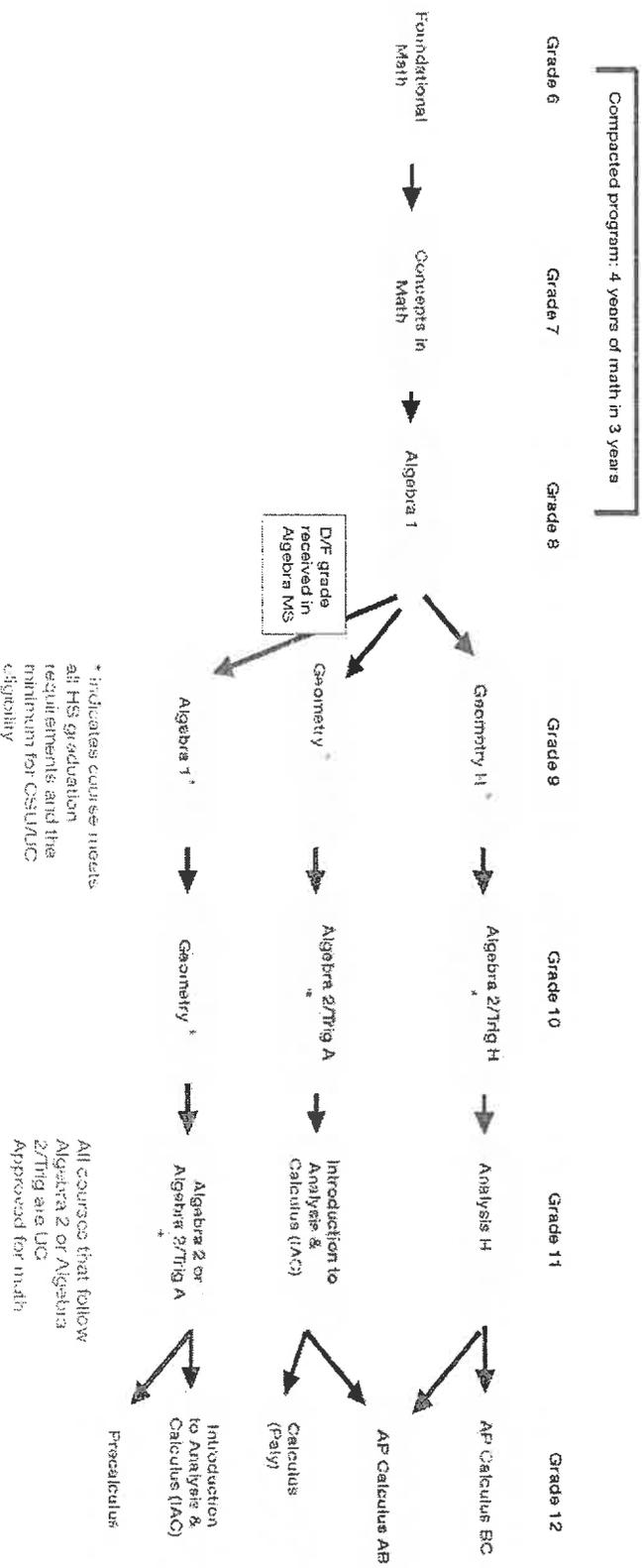
## Acceleration Pathway

Grade 9	Grade 10	Grade 11	Grade 12
<ul style="list-style-type: none"> <li>● Algebra 2/Trig H</li> <li>● Algebra 2/Trig A</li> </ul>	<ul style="list-style-type: none"> <li>● Analysis H</li> <li>● Intro to Analysis &amp; Calculus (IAC)</li> </ul>	<ul style="list-style-type: none"> <li>● AP Calculus BC</li> <li>● AP Calculus AB</li> <li>● AP Stats</li> <li>● Intro to Data Science</li> <li>● Applied Math H</li> </ul>	<ul style="list-style-type: none"> <li>● AP Stats</li> <li>● Intro to Data Science</li> <li>● Applied Math H</li> <li>● Community college courses</li> </ul>

# Math Flow Charts

The three flowcharts below show the various math pathways available. The addition of an *A* or an *H* in the title of a course indicates *Advanced* course or an *Honors* course, respectively. In the first, the common pathways are depicted (without the flexibility included) so that the basic configuration of the flow is more obvious.

PAUSD Secondary Math Flow Chart: Common Pathways

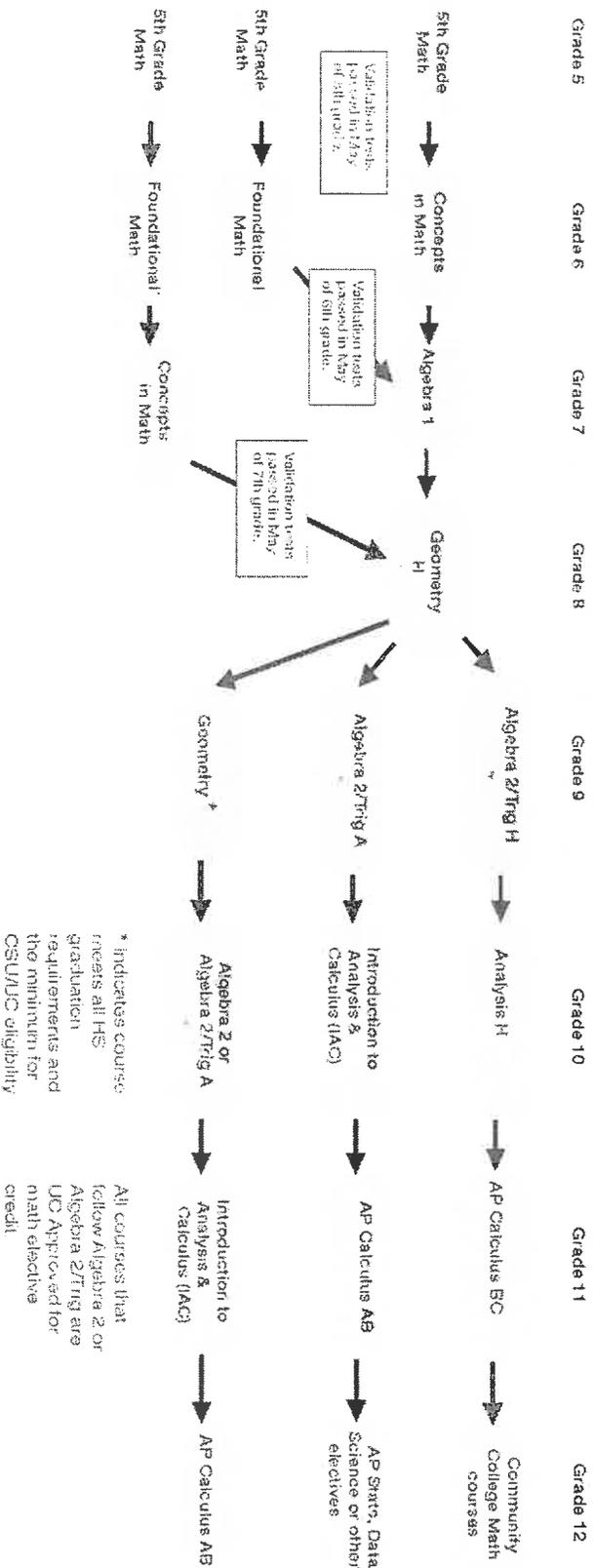


Students may also take AP Statistics, Data Science and/or other electives after required courses are completed.



The third flowchart shows the path for students who participate in the middle school Math Validation Process. Common pathways show a natural, linear flow of concepts and skills from one level to another.

PAUSD Secondary Math Flow Chart: Pathways with Validation Process (End of 5th, 6th OR 7th grade)





**SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SANTA CLARA**  
 DOWNTOWN COURTHOUSE  
 191 NORTH FIRST STREET  
 SAN JOSE, CALIFORNIA 95113  
 CIVIL DIVISION

**(ENDORSED)  
 FILED  
 JUL 21 2023**

**Mark E. Davis  
 Davis Bengtson & Young APLC  
 1960 The Alameda Suite 210  
 San Jose CA 95126**

**Clerk of the Court  
 Superior Court of CA County of Santa Clara  
 BY MELANIE BUENO DEPUTY**

**RE: Edith Cohen et al vs Palo Alto Unified School District  
 Case Number: 21CV385694**

**PROOF OF SERVICE**

**ORDER AFTER HEARING ON COMPLIANCE WITH WRIT OF MANDATE ORDER** was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

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If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

**DECLARATION OF SERVICE BY MAIL:** I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on July 21, 2023. CLERK OF THE COURT, by Melanie Bueno, Deputy **MELANIE BUENO**

**cc: Mark John Wojciechowski 1550 The Alameda, Ste 211 San Jose, CA 95126-2304**